



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AH72

Defense Federal Acquisition Regulation Supplement: New Free Trade Agreement with Colombia (DFARS Case 2012-D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Columbia.

DATES: Effective date: [Insert date of publication in the **FEDERAL REGISTER.**]

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012-D032, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D032" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D032." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D032" on your attached document.

o Email: dfars@osd.mil. Include DFARS Case 2012-D032 in the subject line of the message.

o Fax: 571-372-6094.

o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends DFARS part 252 to implement the United States–Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the Federal Acquisition Regulation (FAR) as the Colombia Free Trade Agreement (FTA). The FTA provides for–

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Colombia; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

II. Discussion and Analysis

This interim rule adds Colombia to the definition of “Free Trade Agreement country” in multiple locations in the DFARS. The Colombia FTA covers acquisition of supplies and services equal to or exceeding \$77,494. The threshold for the Columbia FTA is \$7,777,000 for construction.

Because the Colombia FTA construction threshold of \$7,777,000 is the same as the World Trade Organization Government Procurement Agreement threshold, no new clause alternates are required for the Balance of Payments Program–

Construction Material under the Trade Agreements clause (DFARS 252.225-7045).

There are also conforming changes to the clause at DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et

seq. Although the rule now opens up Government procurement to the goods and services of Colombia at or above the threshold of \$77,494, DoD does not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside or provide other forms of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions that do not exceed \$150,000 (with some exceptions) are automatically reserved exclusively for small business concerns. Therefore, DoD has not performed an Initial Regulatory Flexibility Analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012-D032), in correspondence.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under OMB Control Number 0704-0229, titled Defense Federal Acquisition Regulation Supplement part 225, Foreign Acquisition, and related clauses,

in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because it is just a question of under which category offered goods from Colombia would be listed.

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreement with Colombia entered into force on May 15, 2012. This Trade Promotion Agreement is a reciprocal agreement approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Colombia, as Colombia in turn honors its new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin

Editor, Defense Acquisition Regulations System

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225-7017 [Amended]

2. Section 252.225-7017 is amended by—

a. In paragraph (a), in the definition of "Designated country," paragraph (ii), by removing "Australia, Bahrain, Canada, Chile, Costa Rica" and adding "Australia, Bahrain, Canada, Chile, Columbia, Costa Rica" in its place; and

b. In paragraph (a) in the definition of "Free Trade Agreement country" removing "Australia, Bahrain, Canada, Chile, Costa Rica" and adding "Australia, Bahrain, Canada, Chile, Columbia, Costa Rica" in its place.

252.225-7021 [Amended]

3. Section 252.225-7021 is amended in paragraph (a), in the definition of "Designated country," paragraph (ii), by removing "Australia, Bahrain, Canada, Chile, Costa Rica" and adding "Australia, Bahrain, Canada, Chile, Columbia, Costa Rica" in its place.

252.225-7045 [Amended]

4. Section 252.225-7045 is amended in paragraph (a), in the definition of "Designated country," paragraph (2), by removing "Australia, Bahrain, Canada, Chile, Costa Rica" and

adding "Australia, Bahrain, Canada, Chile, Columbia, Costa Rica"
in its place.

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